

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

THE ANIMAL HOSPITAL ON MT. LOOKOUT SQUARE, INC.)	Civil Action No. 1:20-cv-00270
)	
)	
Plaintiff,)	Judge Susan J. Dlott
)	
v.)	
)	
MASTERS PHARMACEUTICAL, LLC, et al.)	
)	
Defendants.)	

MOTION TO WITHDRAW OR VACATE ORDER OF APRIL 20, 2020

Pursuant to Rules 41(a) and 60(b) of the Federal Rules of Civil Procedure, Plaintiff The Animal Hospital on Mt. Lookout Square, Inc. (“Animal Hospital”) respectfully requests that the Court withdraw or vacate the Order (Doc. #6) of April 20, 2020.

Respectfully submitted,

/s/ Matthew E. Stubbs

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MEMORANDUM IN SUPPORT

On April 20, 2020, Animal Hospital filed a Notice of Voluntary Dismissal (Doc. #5) pursuant to Federal Civil Rule 41(a)(1)(A)(i). Voluntary dismissals under Rule 41(a)(1) are, unless stated otherwise, without prejudice. *See* Fed. R. Civ. Pro. 41(a)(1)(B) (“Unless the notice or stipulation states otherwise, the dismissal is without prejudice.”) The Notice of Voluntary Dismissal contained no language that this matter was being dismissed “with prejudice”; therefore, the dismissal was without prejudice. *See also Wellfount Corporation v. Hennis Care Centre of Bolivar, Inc.*, 951 F.3d 769, 772 (6th Cir. 2020) (“a notice of dismissal under Rule 41(a)(1) is self-effectuating and never subject to review”).

The Order of April 20, 2020 incorrectly stated this matter was dismissed with prejudice. *See* Order (Doc. #6, PageID# 37) (“this action (including all claims by all parties) is hereby DISMISSED WITH PREJUDICE”). (*capitalization and parenthesis in original*). Additionally, the Order incorrectly stated that this matter “has been settled.” Order (Doc. #6, PageID# 37). As the matter has not been settled and should not be dismissed with prejudice, Animal Hospital requests that this Court withdraw or vacate the Order of April 20, 2020, which this Court has the right to do under Rule 60(b). *See* Fed. R. Civ. Pro. 60(b) (“On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason that justifies relief.”)

CONCLUSION

For all of the foregoing reasons, Plaintiff The Animal Hospital on Mt. Lookout Square, Inc. respectfully requests that the Court withdraw or vacate the Order (Doc. #6) of April 20, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.

/s/ Matthew E. Stubbs
